PT 97-29
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

ELBURN AMERICAN LEGION #630 BUILDING ASSOCIATION, APPLICANT	)	**Docket Nos: 95-45-134, 95-45-155**
v.	)	**Real Estate Exemptions for 1995 Tax Year**
STATE OF ILLINOIS, DEPARTMENT OF REVENUE	)	**P.I.N.S: 11-06-240-021 (Docket # 95-45-134); 11-06-240-006 (Docket #95-45-155)**
	)	**Alan I. Marcus, Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Richard Williams of Ottosen, Sinson, Trevarthen & Britz, Ltd. appeared on behalf of the Elburn American Legion #630 Building Association.

SYNOPSIS: These proceedings raise the primary issue of whether the building assigned Permanent Index Number 11-06-240-021 (hereinafter "parcel 021" or the "building") by the Kane County Supervisor of Assessments should be exempt from 1995 real estate taxes under 35 **ILCS** 200/15-145,[1] which states as follows:

> All property of veterans' organizations used exclusively for charitable, patriotic and civic purposes is exempt [from real estate taxation].

1. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), (hereinafter "Bracher"), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1995 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Property Tax Code (35 **ILCS** 200\1-1 *et seq*).

35 **ILCS** 200/15-145.

Alternatively, the Elburn American Legion #630 Building Association (hereinafter the "applicant" or the "Association") seeks to exempt the above-mentioned parcel under 35 **ILCS** 200/15-65. This provision states, in relevant part that:

> All property of the following is exempt [from real estate taxation] when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:
>
> (a) institutions of public charity.

Applicant also seeks to exempt the parking lot assigned Permanent Index Number 11-06-240-006 [hereinafter "parcel 006" or the "parking lot"] by the Kane County Assessor under 35 **ILCS** 200/15-125, which states that "[p]arking areas, not leased or used for profit, when used as part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, or religious or charitable institutions which meets the qualifications for exemption, are exempt [from real estate taxation]."

The controversies arise as follows:

On October 6, 1995, applicant filed two separate real estate complaints with the Kane County Board of Review (hereinafter the "Board"). Said complaints alleged that parcels 021 and 006 were exempt from real estate taxation under 35 **ILCS** 15-145.

The Board reviewed applicant's complaint and recommended to the Department of Revenue (hereinafter the "Department") that the requested exemptions be denied. On January 19, 1996, the Department accepted the Board's recommendation as to parcel 021 by issuing a certificate finding that the parcel was not in exempt use.

The Department subsequently accepted the Board's recommendation concerning parcel 006 by issuing a certificate, dated February 23, 1996, finding that the parking lot was not in exempt use.

Applicant later filed timely requests for hearing as to both parcels. After a pre-trial conference, the Administrative Law Judge conducted an evidentiary hearing on August 6, 1996. During said hearing, applicant's attorney moved for and was granted consolidation of case numbers 95-45-134 and 95-45-155. (Tr. pp. 7 - 9). Following submission of all evidence and a careful review of the record, it is recommended that parcels 021 and 006 not be exempt from real estate taxation for the 1995 assessment year.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Ex. Nos. 1 and 1A and Dept. Ex. Nos. 2 and 2A.

2. The Association was incorporated under the General Not For Profit Act on March 29, 1949. Its Articles of Incorporation indicate that it is organized for "[s]ocial, civic and patriotic purposes and in furtherance of same but not in limitation thereof, to own, erect, operate, lease and maintain a home for club and social purposes for use by members of the American Legion Post Number 630, of Elburn, Illinois." (hereinafter the "Legion"). [sic]. Applicant Ex. No. 2; Tr. p. 12.

4. The Legion itself was founded in 1920. Its membership is limited to veterans who served in the United States armed forces during World Wars I and II as well as the Korean and Vietnam Wars and the Persian Gulf Conflict. Tr. p. 11.

5. Applicant acquired its ownership interest in parcel 021, which is located at Main Street, Elburn, IL 60119, via a warrantee deed dated April 4, 1949. Dept. Ex. No. 1; Applicant Ex. No. 5.

6. Parcel 021 is improved with a two-story building. Applicant leases most of the first (or top) floor to the Town and Country Public Library District (hereinafter the "library" or the "district"), which uses the demised portion as a public library. Dept. Ex. No. 1; Applicant Ex. No. 10A.

7. The library's rent is determined according to a lease dated April 1, 1991 and amounted to $8,751.46 per quarter throughout the 1995 assessment year. Applicant Ex. Nos. 4, 7.

8. The remaining space on the first floor is divided between a small community room, restrooms and a storage area. Applicant Ex. No. 10A.

9. Most of the second floor (or basement) space is used for Legion meetings. This space is also used for meetings of the Legion's women's auxiliary and rented to third parties for weddings, birthday parties, funeral dinners, bachelor parties and other special occasions. Applicant Ex. Nos. 4 and 10B; Tr. pp. 29, 38, 78.

10. The remaining bottom floor contains a kitchen, a furnace room and two separate storage rooms. One of the storage rooms is used by the Legion. The other is used by the women's auxiliary. Applicant Ex. No. 10B.

11. Parcel 006 is located directly west (in back of) parcel 021. It is improved with a 17,820 sq. ft. parking lot. Dept. Ex. No. 1A; Dept. Group Ex. No. 1A.

12. Applicant acquired its ownership interest in parcel 006 via a series of five deeds. Three of the deeds were dated May 24, 1956. The other two were dated September 24, 1960. Applicant Ex. Nos. 11 through 15.

CONCLUSIONS OF LAW:

On examination of the record established this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject parcels from 1995 real estate taxes. Accordingly, under the reasoning given below, the determinations

by the Department that parcels 021 and 006 do not satisfy the requirements for exemption set forth in 35 **ILCS** 200/15-145, 200/15-65 and 200/125 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-3 *et seq*. (hereinafter the "Code"). Applicant posits that the present matter is governed by the Code provisions found at 35 **ILCS** 200/15-145. That provision states as follows:

> All property of veterans' organizations used exclusively for charitable, patriotic and civic purposes is exempt [from real estate taxation].

35 **ILCS** 200/15-145.

Applicant also seeks to exempt parcel 021 under Section 200/15-65 of the Code, which states, in relevant part, that:

> All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and *not leased or otherwise used with a view to profit*:
>
> ***
>
> (a) institutions of public charity

35 **ILCS** 200/15-65. [Emphasis added].

It is well established in Illinois that statutes exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebego Home for the Aged, 40 Ill.2d 91 (1968) (hereinafter "Nordlund"); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

An analysis of whether this applicant has met its burden of proof begins with some fundamental principles: first, that the word "exclusively," when used in Sections 200/15-65 and 200/15-145 means "the primary purpose for which property is used and not any secondary or incidental purpose." Gas Research Institute v. Department of Revenue, 145 Ill. App.3d 430 (1st Dist. 1987); Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). Second, that "statements of the agents of an institution and the wording of its governing documents evidencing an intention to [engage in exclusively charitable activity] do not relieve such an institution of the burden of proving that ... [it] actually and factually [engages in such activity]." Morton Temple Association v. Department of Revenue, 158 Ill. App.

3d 794, 796 (3rd Dist. 1987). Therefore, "it is necessary to analyze the activities of the [applicant] in order to determine whether it is a charitable organization as it purports to be in its charter." *Id*.

The first step in applying the above criteria is recognizing that the Association and the Legion are separate legal entities. One must also recognize that the Legion held no ownership interest in the subject properties during 1995. Rather, the deeds (Applicant Ex. Nos. 5, 11, 12, 13, 14 and 15) establish that the Association was vested with legal title to both parcels throughout that assessment year.

These distinctions are important because both Sections 200/15-145 and 200/15-65 contain the preposition "of[,]" which connotes that both provisions have ownership requirements. Therefore, the present exemption claims depend on whether the Association itself qualifies as a "veteran's organization" or an "institution of public charity." For the following reasons, I conclude that the Association fails to qualify as either.

Applicant's Articles of Incorporation state that it is organized ".. to own, erect, operate, lease and maintain a home *for* club and social purposes *for use by* members of the ... Legion ... (emphasis added). Based on this statement, I conclude that the Association is not a "veteran's organization" within the meaning of Section 200/15-145.[2] Rather, it is a not-for-profit corporation which is both organized for purposes of, and in fact carries out the functions of, owning and operating the building at which the Legion conducts its meetings and transacts other business. Therefore, I believe it would be more appropriate to analyze the Association's exemption claims under the statutory provisions that pertain to "institutions of public charity."

[2]. In making this conclusion, I do not in any way imply that the *Legion* is not a "veteran's organization." Rather, I merely state that the Legion and the Association are separate legal entities and that the latter is not the type of organization described in Section 200/15-145.

Illinois courts have long held that an applicant seeking exemption under Section 200/15-65 or its predecessor provisions[3] cannot obtain relief thereunder unless it establishes that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968), (hereinafter "Korzen"). Nevertheless, in a line of cases dating to People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944), (hereinafter "Goodman"), Illinois courts have recognized that, in the context of properties used exclusively for charitable or educational purposes, practical business realities may prevent an applicant from obtaining legal title to, or obtaining conventional financing for, an otherwise exempt parcel.[4]

These courts have further recognized that such realities often "penalize a charitable institution for failing to acquire conventional forms of financing," and thereby, "defeat the stated objective and policy consideration of encouraging charitable activity." Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51, 62 (1978); Cole Hospital v. Champaign

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[3]. As noted in footnote 1, only the Property Tax Code, 35 **ILCS** 200/1-3 *et seq*, governs disposition of the instant case. However, it should be noted that the Revenue Act of 1939, 35 **ILCS** 205/1 *et seq.*, contained statutes governing property tax exemptions for the 1992 and 1993 tax years. The exemption provisions for tax years prior to 1992 were contained in Ill. Rev. Stat. 1991 par. 500 ***et seq***. These provisions, as well as their predecessors, were repealed when the Property Tax Code took effect January 1, 1994. *See*, 35 **ILCS** 200/32-20.

[4]. *See*, Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978), (Because conventional financing was unavailable, appellee employed contract for warranty deed rather than conventional purchase money mortgage to purchase real estate used for charitable purposes); Southern Illinois University Foundation v. Booker, 98 Ill. App. 3d 1062 (5th Dist, 1981), (Appellants acquired title to property used for educational purposes from Southern Illinois University solely as a convenience to the University with regard to long-term financing); Cole Hospital v. Champaign County Board of Review, 113 Ill. App. 3d 96 (4th Dist, 1983), (Due to troubled financial history and unavailability of State revenue bonds, Appellee employed conveyance and lease-back arrangement to obtain equitable title to property used for charitable purposes).

County Board of Review, 113 Ill. App. 3d 96, 100 (4th Dist, 1983). Accordingly, the Christian Action Ministry and Cole Hospital courts avoided such undesirable results by holding that "[w]here the legislature requires legal ownership, that obviously must be respected. Where it does not, actual ownership, legal or equitable, is proper." Christian Action Ministry, *supra*, at 63; Cole Hospital, *supra* at 99.

The above cases suggest that the Association might satisfy the charitable ownership requirement under a constructive trust theory. However, unlike Goodman, wherein the University of Illinois was legally forbidden from holding title to real estate in its own corporate name, the testimony of the Association's president, Norbert A. Lund, fails to disclose that this applicant was subject to a similiar prohibition. (Tr. pp. 12 - 13).

Mr. Lund's testimony clearly establishes that applicant assumed title to the building in its own name because the Legion's national organization "strongly endors[ed]" having the individual Posts incorporate for legal reasons. (Tr. p. 13). Given that the national organization did not *require* applicant or the Legion itself to incorporate, I must consider the Association's decision to follow the aforementioned endorsement a business judgment made after the applicant engaged in due deliberation of, and gave careful consideration to, the relevant available alternatives. Consequently, I am compelled to conclude that the instant record does not support imposition of a constructive trust based on legal impossibility.

Furthermore, the record fails to disclose that practical business considerations prohibited the Legion from assuming title to the building in its own name. Rather, the deed (Applicant Ex. No. 5) and the above-cited portions of Mr. Lund's testimony establish that the Association acquired title to the building as part of an arm's length business transaction and made a good faith business judgment to hold title thereto in its own name rather than that of the Legion. Under these circumstances, it is legally and factually inappropriate to

impose a constructive trust in favor of the applicant. Therefore, I must conclude that the building was not in exempt ownership during 1995.

I would also note that Goodman and its progeny will not provide a legally sufficient basis for exemption unless both the applicant and the parcel at issue otherwise qualify for exemption under Section 200/15-65. Here, the following analysis will demonstrate that neither the applicant nor the parcel itself satisfy the appropriate exemption requirements. Therefore, the building would not be subject to exemption from 1995 real estate taxes even if the present facts warranted imposition of a constructive trust.

With respect to the applicant itself, I note that its Articles of Incorporation contain no specific reference to charity. Illinois courts have, on more than one occasion, indicated that lack of such wording in organizational documents can provide evidence that the applicant is not in fact organized for exempt purposes. People ex. rel. Nordlund v. Association of the Winnebego Home for the Aged, 40 Ill.2d 91 (1968); Albion Ruritan Club v. Department of Revenue, 209 Ill. App.3d 914 (5th Dist. 1991)

More importantly, the "club and social purposes" language of applicant's Articles of Incorporation clearly establishes that it operates for purposes held to be non-exempt in a line of decisions dating to Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956), (hereinafter "Rogers Park").[5] In Rogers Park, the Illinois Supreme Court established the now well-settled principle that denies exempt status to organizations which operate primarily for fraternal and/or social purposes on grounds that such organizations inherently operate for the primary benefit of their own members rather than the public at large.

[5]. For more recent exposition of the principles enunciated in Rogers Park and their application to the specific context of veterans' organizations, *see*, North Shore Post No. 21 v. Korzen, 38 Ill.2d 231 (1967); Pontiac Lodge No. 294, AF and AM v. Department of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1993). For application of these principles in other contexts, *see*, Morton Temple Association, Inc. v. Department of Revenue, 158 Ill. App. 3d 794 (3rd Dist. 1987); DuPage Art League v. Department of Revenue, 177 Ill. App. 3d 895 (2d Dist. 1988).

Hence, any benefits which applicant and similiar organizations confer on the public are incidental to their non-exempt primary purpose. Therefore, such benefits are legally insufficient to satisfy the "public benefit" aspect of charity which our courts have long recognized as being fundamental to this particular body of law.[6]

Concerning the parcel itself, it is significant that applicant leases most of the first-floor space to the Library and that the lessee made quarterly rental payments of $8,751.46 throughout the 1995 assessment year. This use violates both the plain language of Section 200/15-65 and the elementary principle, first enunciated in People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924) (hereinafter "Baldwin"), that "[i]f real estate is leased for rent, whether in cash or other form of consideration, it is used for profit." Baldwin at 140. Thus, "[w]hile the application of income to charitable purposes aids the [purported] charity, the primary use of [the parcel in question] is for [non-exempt] profit." *Id*. *See also*, Turnverein "Lincoln" v. Board of Appeals of Cook County, 358 Ill. 135 (1934); Salvation Army v. Department of Revenue, 170 Ill. App.3d 336, 344 (2nd Dist. 1988).

The foregoing analysis demonstrates that the first floor was primarily used for non-exempt rental purposes during 1995. Consequently, any uses of the remaining first-floor space, such as voting (which took place in the community room no more than twice during the 1995 assessment year, Tr. p. 34), storage, fingerprinting and intermittent meetings of various community-oriented groups, (e.g. the Main Street Baseball Association, Lions Club, Alcoholics Anonymous, etc.) were incidental thereto. *See*, Applicant Ex. No. 4; Tr. pp 29, 33-34, 68. As such, these uses are legally insufficient to establish that the first floor

[6]. For additional analysis of the economic-based public benefit aspect, *see*, People ex. rel. Brenza v. Turnverein Lincolon, 8 Ill.2d 188, 202-203 (1956); Yale Club of Chicago v. Department of Revenue, 214 Ill. App.3d 468 (1st Dist. 1991); DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App.3d 461 (2nd Dist. 1995). For further analysis as to how this and other requirements are used to determine charitable status (or lack thereof), *see*, Korzen, *supra*.

was exclusively used for charitable purposes in 1995. Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993).

Nor does the leasehold qualify for exemption under that portion of Section 200/15-65 which exempts "all free public libraries" which are "actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit." 35 **ILCS** 200/15-65(e). The library is not the applicant herein. Nevertheless, assuming *arguendo* that it held that status in this proceeding, the above-referenced statutory and common law prohibitions on leasing would serve to defeat the library's exemption claim. For this and all the preceding reasons, I conclude that the first floor was not in exempt use during 1995.

The evidence pertaining to use of the basement could be interpreted in two ways. Mr. Lund testified that this portion of the building "is used exclusively for Legion purposes." (Tr. p. 29). However, both Mr. Lund's testimony and the monthly income and expense statements (Applicant Ex. No. 4) verify that applicant also "rents out [the basement] for weddings and receptions of that nature." (Tr. p. 29).

If I accept the former use as controlling, Rogers Park and its progeny would establish that the basement was used for non-exempt social and fraternal purposes during 1995. However, if I find the latter controlling as to use, the plain language of Section 200/15-65 and the Baldwin line of cases would require a finding of non-exempt use on grounds that letting the space for rent is inherently geared toward profit motive rather than charitable impulse. Because either interpretation supports taxation, I find it unnecessary to determine whether the basement was primarily used for Legion or rental purposes during 1995. Nonetheless, it would be remiss not to connect this analysis to the preceding discussion and thereby conclude that the entire building was not exclusively used for charitable purposes throughout the 1995 assessment year.

Therefore, the Department's decision denying parcel 021 exemption from 1995 real estate taxes should be affirmed.

The above conclusion does not address applicant's contention that the parking lot should be exempt under 35 **ILCS** 200/15-125. That provision states as follows:

> Parking areas, not leased or used for profit, *when used as part of a use for which an exemption is provided by this Code* and owned by any school district, non-profit hospital, or religious or charitable institutions which meets the qualifications for exemption, are exempt [from real estate taxation]. [Emphasis added].

The italicized portion of Section 200/15-125 clearly prohibits exempting parking areas that do not service facilities that are used for exempt purposes. In the present context, this means that the building itself must be used "exclusively for charitable .... purposes" within the meaning of Section 200/15-65. Given that the foregoing analysis has demonstrated it is not, applicant's attempt to exempt the adjacent parking lot under Section 200/15-125 must fail. Therefore, the Department's decision denying parcel 006 exemption from 1995 real estate taxes should be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that parcel numbers 021 and 006 should not be exempt from 1995 real estate taxes.

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Date

Alan I. Marcus
Administrative Law Judge